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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
LAND USE REGULATION PROGRAM
ENVIRONMENTAL REGULATION
MUNICIPAL FINANCE AND CONSTRUCTION ELEMENT

Ninety-Day Construction Permits

Proposed Readoption with Amendments: N.J.A.C. 7:1C

Authorized By: Bradley M. Campbell, Commissioner,
Department of Environmental Protection

Authority: N.J.S.A. 13:1D-29 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement

DEP Docket Number: _____

Proposal Number: _____

A public hearing concerning the proposal will be held from 1:00 P.M. to close of comments on:

August 15, 2005
Public Hearing Room, 1st Floor
Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments by (60 days after proposal), 2005, to:

Janis Hoagland, Esq.
Attn.: DEP Docket No. _____
Office of Legal Affairs
Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement.

The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used.

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Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

A copy of the proposal is available on paper or on disk by calling the Department at (609) 633-7021. The rule proposal can also be found at the Department's website (www.nj.gov/dep). The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to Executive Order No. 66 (1978), the Ninety-Day Construction Permit Rules (90-day rules), N.J.A.C. 7:1C, are scheduled to expire on June 12, 2005. The Department of Environmental Protection (Department) is proposing to readopt these rules with amendments to the stream encroachment and treatment works fee provisions at N.J.A.C. 7:1C-1.5. Because the proposed readoption was filed before June 12, 2005, the expiration date was statutorily extended by 180 days, until December 9, 2005. See N.J.S.A. 52:14B-5.1c.

The 90-day rules contain permit application review procedures and application fees for both the stream encroachment and treatment works programs. The application reviews are governed by the time frames established by the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. Permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3 are also subject to the permit review processes and time frames established by the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. However, prior amendments to

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N.J.A.C. 7:1C recodified provisions regarding CAFRA and waterfront development permits to the Coastal Permit Program rules at N.J.A.C. 7:7. As such, N.J.A.C. 7:1C currently pertains only to stream encroachment permits issued under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and treatment works approvals issued under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

The Department has reviewed the rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Although the Department is proposing at this time to readopt these rules, with amendments to the fee provisions of N.J.A.C. 7:1C-1.5 as described below, the Department anticipates proposing within the next two years to amend and recodify provisions addressing stream encroachment permits and treatment works approvals from the 90-day rules to the Flood Hazard Area Control rules at N.J.A.C. 7:13 and the rules governing the Treatment Works Approval program at N.J.A.C. 7:14A-22, respectively.

In the existing rules, proposed for readoption, N.J.A.C. 7:1C-1.1 sets forth the purpose of the chapter. N.J.A.C. 7:1C-1.2 contains definitions. N.J.A.C. 7:1C-1.3 provides pre-application procedures and requirements. N.J.A.C. 7:1C-1.4 contains application requirements. N.J.A.C. 7:1C-1.5 contains application fees. N.J.A.C. 7:1C-1.6 requires the Department to publish information about each application in the DEP Bulletin. N.J.A.C. 7:1C-1.7 refers to the rules containing the substantive review standards for the Department to use in reviewing applications. N.J.A.C. 7:1C-1.8 provides deadlines within which the Department must accomplish its review. N.J.A.C. 7:1C-1.9 provides appeal procedures. N.J.A.C. 7:1C-1.10 clarifies that the rules do not limit the Department's authority under other laws except as expressly stated. N.J.A.C. 7:1C-1.11 provides for the severability of any provision judged invalid. N.J.A.C. 7:1C-1.12 specifies

provisions in the flood hazard area rules and the treatment works approval rules that are preempted or augmented by the 90-day rules.

Overview of Stream Encroachment Fees

Stream encroachment permits are issued under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13. A State-run program may derive its funding from legislative appropriations, by directly charging those seeking a service through permit fees, or through a combination of both. The fees collected for stream encroachment permits affect both those who develop property and those who purchase property. Property with permit and development approvals is more costly than property sold contingent upon receiving such approvals, since the property owner can recover the costs of obtaining a permit directly from the purchaser who will have the benefit of using the property, while funding through legislative appropriation is borne by all taxpayers.

Since 1981 the Department has increased the permit fees for the flood hazard regulatory program four times. Existing N.J.A.C. 7:1C-1.5(a)4i classifies activities regulated under this program as either major or minor project elements and assigns permit review fees accordingly. The current stream encroachment fee schedule was promulgated January 5, 2004, (see 36 N.J.R. 172(b)), and increased fees for both major and minor elements by 100 percent. The previous fee amendment in 1993 had increased fees for major elements by 33 percent and fees for minor elements by 100 percent (see 25 N.J.R. 924(a)). Both major and minor elements were increased by 50 percent on June 17, 1985 (see 17 N.J.R. 1544(a)), and by 100 percent on June 4, 1981 (see 13 N.J.R. 334(b)). The following table shows the permit review fees for major and minor elements since 1981:

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Effective date	Fee for each major element	Fee for each minor element
Prior to June 4, 1981	\$500.00	\$50.00
June 4, 1981	\$1,000	\$100.00
June 17, 1985	\$1,500	\$150.00
March 1, 1993	\$2,000	\$300.00
January 5, 2004	\$4,000	\$600.00

At this time, the permit fees collected by the Department amount to approximately 20 percent less than the cost to operate the flood hazard regulatory program. In an effort to close this gap and avoid the need to increase dependence on legislative appropriations to fund this program, the Department is proposing to change the existing fee schedule in order to increase the total fees collected by the flood hazard regulatory program by 20 percent. Rather than propose an across-the-board increase of 20 percent to the existing fees, the Department has evaluated each fee in the existing schedule and is proposing to raise some fees and to delete or lower others in order to better reflect the Department's review time for various regulated activities.

In general, the fees for the flood hazard regulatory program relate to the potential impact of a particular project on the resource to be protected and the resulting amount of time required by the Department to conduct its review. That is, when a project application includes calculations or analyses that require detailed review by the Department, the application review takes more effort and time to complete. Since all reviews must be completed in 90 days, the Department must have sufficient staff to perform the requisite reviews in the statutorily required time frame. Therefore, the Department imposes higher fees for projects requiring more intensive review effort to meet the statutory mandates of the Flood Hazard Area Control Act and the Construction Permits law.

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The fee for a minor project element is proposed to be raised from \$600.00 to \$1,000 as this fee better reflects the level of effort required to review such projects. The fees to delineate a flood hazard area and establish stream encroachment lines based on hydrologic and/or hydraulic calculations are proposed to be modified from \$4,000 per 1,000-foot segment of channel to \$3,000 plus \$300.00 per each 100-foot segment of channel. The fees to establish stream encroachment lines not based on calculations are proposed to be lowered from \$600.00 to \$500.00. These fees better reflect the Department's review time for such projects and will result in a reduction in fees for larger delineations. Similarly, other linear construction projects that alter the hydraulics of a stream, and which therefore require a review of hydrologic and/or hydraulic calculations, such as certain channel modifications and bank stabilization or restoration work, will be assessed the same fee as stream encroachment lines, rather than the existing fee of \$4,000 regardless of the project's length because they require a similar amount of engineering review. Fees for stream cleaning activities will also be raised from \$600.00 to \$1,000 and the Department proposes a new \$100.00 fee per each 100-foot segment of channel, not to exceed a total fee of \$4,000. The additional fee per 100-foot of channel is consistent with the Department's objective to assess fees based upon the size and scope of the required review.

Requests for hardship waivers that are not associated with a single-family dwelling are proposed for classification as a major project element, which would be subject to a \$4,000 fee. The current rules do not set a fee for retaining walls that are at least four feet high but less than 100 feet in length. Under the proposed rules, any retaining wall at least four feet high is classified as a major project element subject to a \$4,000 review fee regardless of the wall's length.

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Three fees are proposed for deletion because they are based on outdated standards and do not reflect the Department's current review effort. The fees proposed for deletion are an \$800.00 fee assessed to review net-fill calculations for single-dwelling driveway culverts, a \$4,000 fee assessed for residential subdivision of greater than 10 acres and a \$4,000 fee assessed for commercial projects that contain more than 1 acre in a flood plain.

Finally, the fee to modify a stream encroachment permit is proposed to be modified from one-quarter of the fee for the entire project to 50 percent of the original fee for each project element that will be modified for which the Department must review calculations, or \$200.00 for each project element that will be modified for which the Department does not need to review calculations.

The Department is also proposing to create a separate fee schedule for projects that require a review of stormwater management calculations in order to determine compliance with the new Stormwater Management rules at N.J.A.C. 7:8, which were adopted in 2004. This fee, which will be assessed only for major developments as defined at N.J.A.C. 7:8-1.2, is proportional to the type, size, location and level of proposed development and is described in greater detail in the proposed amendments. The proposed fee ranges between \$2,000 and \$16,000 per project, with an estimated average fee of \$4,500 per project. This fee will replace the existing fee of \$4,000 per basin under existing N.J.A.C. 7:1C-1.5(a)4, which is currently assessed only for basins proposed within flood hazard areas and 100-year flood plains. The Department believes that the addition of a fee schedule for stormwater reviews is reasonable and appropriate given the substantially increased workload resulting from the adoption of Stormwater Management rules, as discussed in greater detail below.

Overview of Treatment Works Approval Fees

The minimum fee for treatment works approvals is proposed to be raised from \$450.00 to \$850.00 to better reflect the Department's review effort. The fee for extensions of time for issued treatment works approvals is proposed to be simplified to \$200.00 per extension, rather than the current fee of \$50.00 plus a base fee for Category 3 approvals and \$150.00 plus a base fee for Category 1 or 2 approvals. Finally, the fee for a request to modify an issued treatment works approval, which is currently one-quarter of the total original permit fee or a minimum of \$100.00, is proposed to be changed so that it is based on the construction cost of the proposed modifications in accordance with N.J.A.C. 7:1C-1.5(a)5i through iii, with a minimum fee of \$500.00. The name and mailing address for the treatment works program is also proposed to be updated.

Proposed Amendments

Existing N.J.A.C. 7:1C-1.5(a)4 sets forth the review fees for stream encroachment permit applications. The paragraph is proposed to be deleted and replaced with clarified and amended text, as follows. The definition of "drainage area" is proposed for deletion since the term is not used in the rules, the text it related to having been removed in a previous amendment of this chapter. The definitions of "minor stream encroachment project" and "major stream encroachment project" are replaced with definitions of "major" and "minor," since these terms are used in the proposed fee table.

Proposed N.J.A.C. 7:1C-1.5(a)4i explains that a "major" element is a proposed stream encroachment activity that requires the Department to review detailed engineering calculations in order to determine whether the project complies with the design and construction standards of

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the Flood Hazard Area Control rules at N.J.A.C. 7:13 and/or the Stormwater Management rules at N.J.A.C. 7:8. The definition is updated to refer to a project that is subject to the requirements of the Stormwater Management rules rather than to the “review of any stormwater detention basin.” The exemption for net-fill calculations for a “single family dwelling” is rewritten to clarify that only one dwelling, as well as any appurtenant structures such as a barn, shed, garage or addition to the dwelling, is eligible for the exemption.

Proposed N.J.A.C. 7:1C-1.5(a)4ii defines a “minor” element as any stream encroachment activity that does not meet the proposed definition of a major element. A “minor” element is a stream encroachment activity of a less significant nature, for which the Department does not need to review detailed engineering calculations in order to determine compliance with N.J.A.C. 7:13.

The proposed definitions of “major” and “minor” clarify the distinction between the two terms, namely that “major” elements of a stream encroachment project require a review of calculations and therefore warrant a higher review fee and “minor” elements do not. The existing rules refer to these regulated activities as major or minor “stream encroachment projects,” which has led to some confusion among applicants because “stream encroachment project” is generally understood to describe the entire project covered by a stream encroachment permit application, which may include multiple major and/or minor elements. Thus a “minor stream encroachment project” can be part of a major stream encroachment permit application, if a “major stream encroachment project” is also proposed onsite. The proposed terms clarify this distinction.

In addition, rather than give examples of major and minor elements as is done in the existing rules, the proposed rule at N.J.A.C. 7:1C-1.5(a)4iii, includes a table that identifies

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particular regulated activities as major or minor and the applicable fee. Although the major/minor classification itself is not useful for the purposes of this chapter, the Flood Hazard Area Control rules at N.J.A.C. 7:13-1.2, 3.7(c), 4.2(a) and 4.4 reference major and minor project elements, which necessitates that regulated activities be categorized as one or the other in these fee rules.

Proposed N.J.A.C. 7:1C-1.5(a)4iii provides that the application fee for a stream encroachment permit shall be determined by adding the individual fees, identified in Tables 1 and 2, for each activity proposed onsite that is regulated under N.J.A.C. 7:13. This is the same method of calculating fees used under the existing rules. The proposed rule also notes that any application that includes at least one major element is considered a major stream encroachment project, which is also the current practice under the existing rules. As noted above, Table 1 also identifies each activity as being a major element or a minor element to correspond with N.J.A.C. 7:13. Proposed N.J.A.C. 7:1C-1.5(a)4iii further explains how to determine the fee for certain projects in cases where the fee is dependent upon the length of the channel but no channel is discernible. In such a case, the length of the channel, for the purpose of calculating the fee, shall be determined by measuring the centerline of the feature.

With the exception of stream cleaning projects and certain retaining walls, as explained below, the fees for activities defined as minor stream encroachment projects in the existing rules and as minor project elements in the proposed rules are proposed to be raised from \$600.00 to \$1000. The existing rules establish a fee of \$600.00 per minor element and \$4,000 per major element. The fee for a major element is therefore almost seven times the fee for a minor element. A higher fee is justified for major elements since they require the review of detailed calculations in order to determine compliance with the Flood Hazard Area Control rules and the

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Stormwater Management rules. However, it is the Department's experience that it does not require seven times the effort or staff time to review a major element as compared with a minor element. As noted above, the Department has determined that the stream encroachment program must raise its fees by 20 percent in order to cover the program's operating costs. However, in order to accomplish this while also reducing the disparity between the fees for major and minor elements, only the fees for minor elements will be increased. Some fees for major elements are modified or deleted, as described below. The ratio between the fees for major versus minor elements, which are not dependent on the length of the project, will be reduced from seven-to-one to four-to-one, which reflects the actual difference in review times for these elements.

In accordance with the reasoning outlined above, the proposed fee for a bank stabilization, reestablishment or protection project element is \$1,000 if no review of calculations is necessary. This is consistent with existing N.J.A.C. 7:1C-1.5(a)4i(2), which describes such activities as "minor" and establishes a fee of \$600.00 for such projects. However, under the proposed fees, bank stabilization, reestablishment or protection project elements that do require a review of calculations to determine compliance with the requirements of the Flood Hazard Area Control rules are major elements subject to a higher fee. For instance, alterations to the natural banks can change flow characteristics in the channel and adversely affect flooding. As such the applicant must provide detailed hydrologic and hydraulic calculations to demonstrate that the project will not adversely impact flooding.

The proposed review fee for major bank stabilization, reestablishment or protection projects is \$3,000 plus \$300.00 per each 100 linear feet (or portion thereof) of channel affected by the project. This codifies the longstanding practice of the Department to consider such activities to be major elements and to assess a major element review fee, which is currently

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\$4,000 regardless of the length of the project. The proposed fee includes a flat fee to review hydrologic calculations and a fee related to the length of the project to review hydraulic calculations. This is appropriate because hydrologic calculations relate to the amount of floodwater reaching the channel and are often performed only once per project, whereas hydraulic calculations relate to the depth and velocity of floodwater in the channel at various locations and are performed in proportion to the project's length. The proposed fee is also equal to the proposed fee for other linear projects that require a review of calculations, as described below. Because the Department is proposing a new fee based upon linear feet of channel affected, the proposed fee for major bank stabilization, reestablishment or protection projects that are 300 feet or less in length will be lower than under the existing rules, while the proposed fee for such projects in excess of 300 feet in length will be higher than under the existing rules.

The fees for bridges, culverts, footbridges, low dams and other water control structures are proposed to be \$4,000, \$2,000, or \$1,000, depending on whether calculations must be reviewed and whether a bridge or culvert to access a private residence is proposed. This is consistent with the existing fee schedule, except that the fee for minor elements is raised from \$600.00 to \$1,000 as noted above.

Under existing N.J.A.C. 7:1C-1.5(a)4i(3), certain items such as bridges, culverts, small dams and channel modifications are considered major project elements, whether or not review of calculations is needed. However, in some cases, applications for permits for these activities do not require the review of detailed calculations and therefore are not as labor-intensive as those for typical major elements. The proposed rules therefore account for those applications where no calculations are necessary and set a \$1,000 fee for these activities, reflecting the lesser review effort required.

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In the case of a bridge or culvert providing access to one private residence, which is not being constructed as part of a larger residential subdivision, the proposed fee is \$2,000. Under the existing rules, \$800.00 is added if the Department must review net-fill calculations. The proposed rules do not include this additional fee. The Department has determined that the additional fee for a project involving fill is not needed because few of these projects are large enough to require net-fill calculations.

Existing N.J.A.C. 7:1C-1.5(a)4iii establishes the fee for a channel modification as \$4,000 regardless of the length of the project. However, as noted above, the Department's review time increases with the length of the channel modification. Therefore, the proposed fee is the same as the fee for a major bank stabilization, reestablishment or protection project, which is \$3,000 plus \$300.00 per each 100 linear feet (or portion thereof) of channel affected. It is the Department's experience that most channel modification projects require a review of hydrologic and/or hydraulic calculations. However, in the few cases where no calculations are required, the review fee will be \$1,000 to reflect the fact that less review is necessary.

The existing fee of \$4,000 to review net-fill calculations for excavation, fill and/or grading activities is continued unchanged in the proposed rules. In cases where excavation, fill and/or grading is proposed apart from any other activity, and the Department does not need to review net-fill calculations, the excavation, fill and/or grading is classified as a minor element, which is consistent with the existing rules. In addition, there is no fee for excavation, fill and/or grading if such work is associated with another project element, provided the Department does not need to review net-fill calculations. This is also consistent with the existing rules. The fee to review net-fill calculations also does not apply if the excavation, fill and/or grading is solely associated with the construction of a bridge or culvert that is a major element, which is consistent

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with existing N.J.A.C. 7:1C-1.5(a)4vi. Because the net-fill calculations for an individual private residence, or an addition to a residence, will be simpler than for larger developments, the fee to review net-fill calculations does not apply if the excavation, fill and/or grading is solely associated with the construction of a private residence, which is not being constructed as part of a larger residential subdivision, or for the construction of an appurtenant building, such as an addition, garage, barn or shed. This is consistent with existing N.J.A.C. 7:1C-1.5(a)4vi.

A \$4,000 fee is proposed for the review of a hardship waiver request, the conditions and procedures for which are set forth in the Flood Hazard Area Control rules at N.J.A.C. 7:13-4.8. A hardship waiver request asks the Department to consider special circumstances where strict compliance with the design and construction standards of N.J.A.C. 7:13 is not possible or feasible. The existing rules do not establish a fee for hardship waiver requests. However, a request for a hardship waiver requires an extensive review of various forms of documentation and in most cases entails a detailed alternatives analysis in addition to the review that is normally required for a permit application. Therefore, the proposed fee reflects the extra time and effort the Department requires to review such applications. In order to lessen the burden on private homeowners, no fee is proposed to review a hardship waiver request that involves the construction of one private residence (which is not being constructed as part of a larger residential subdivision) or an appurtenant building.

The proposed fee for the construction of a private residence, or an addition or appurtenant structure such as a garage, barn or shed, is proposed to be increased, like those for other minor elements from \$600.00 to \$1000.

The proposed fee for the construction of any retaining wall that extends 4 or more feet above the ground is \$4,000. Existing N.J.A.C. 7:1C-1.5(a)4i(2) provides that “less than 100

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linear feet of a retaining wall four foot high or less” is a minor element, while existing N.J.A.C. 7:1C-1.5(a)4i(3) provides that “greater than 100 linear feet of a retaining wall more than four feet high” is a major element. The existing rules therefore do not set a fee for walls that are over 4 feet high but under 100 feet long, or for walls that are under 4 feet high but over 100 feet long. Since a review of a detailed stability analysis prepared by a licensed professional engineer is required for any retaining wall that is at least four feet high under the Flood Hazard Area Control rules at N.J.A.C. 7:13-2.13(a)9, any wall that is at least four feet in height is considered a major stream encroachment project element. The length of the wall does not generally affect the Department's review effort.

The fee for sediment removal from a channel is proposed to be increased. The existing fee is \$600.00 regardless of the length of the project. The proposed fee is \$1,000 plus \$100.00 per each 100 linear feet of channel (or portion thereof) to be cleaned. This fee reflects the actual review time required for such a project. A cap of \$4,000 is proposed for this fee for two reasons. First, it is the Department's experience that once sediment removal projects exceed approximately 3,000 feet in length, there is no appreciable increase in the review time for such projects. Second, some local governments apply for sediment removal permits for entire municipalities and counties. The fee for such a project would be very high and difficult to calculate since there is no accurate measurement of the total length of stream corridors in each jurisdiction. Furthermore the review effort involved in such an application is not generally more than that which is required for a typical major element and the fee for most major elements is \$4,000.

As with other minor elements, the fee for a stormwater discharge structure is proposed to be increased from \$600.00 to \$1,000. This fee will be assessed in addition to the fee for any

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basin to which the discharge structure may be connected. This differs from the current rules under which one fee covers both the basin and the discharge. Under the existing rules, if the basin is situated within the flood hazard area, the basin and discharge are collectively considered to be a major element and the fee is \$4,000. If the basin is situated outside the flood hazard area, the basin and discharge are collectively considered to be a minor element and the fee is \$600.00. Since the amount of review is not significantly different whether the basin is located within or outside the flood hazard area, the Department has determined that a higher fee is appropriate only when the review of stormwater management calculations is necessary. This additional fee for the review of stormwater management calculations for activities that are major developments under the Stormwater Management rules (N.J.A.C. 7:8) is discussed in detail below.

Finally, if a stormwater discharge structure involves multiple elements in series, such as the construction of an outfall structure with conduit outlet protection that discharges into a constructed swale, the \$1,000 fee covers the entire series of activities associated with the new stormwater discharge. A separate fee is not applied for each element in series. However, the rehabilitation or stabilization of an existing discharge, such as creating a new conveyance swale or placing new conduit outlet protection, would constitute a minor element. This is consistent with current Department practice.

Existing N.J.A.C. 7:1C-1.5(a)4iv sets forth fees for projects that require the establishment of stream encroachment lines. The limits of flooding along many of New Jersey's watercourses has been delineated by consultants under contract to the Department and the resultant mapping has been promulgated by the Department as part of the Flood Hazard Area Control rules at N.J.A.C. 7:13-7. In cases where no Department-promulgated flood hazard area mapping exists, an applicant proposing to construct along a regulated watercourse often must perform

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calculations to delineate the flood hazard area limits. This is necessary because the depth of flooding and the location of the floodway on a site typically must be known in order for the Department to be able to determine whether a proposed construction activity meets the design and construction standards of the Flood Hazard Area Control rules. N.J.A.C. 7:13-2.4 therefore sets forth standards for the establishment of stream encroachment lines, which are metes and bounds descriptions of the limits of encroachment along a regulated watercourse associated with a proposed construction activity that is subject to the requirements of the Flood Hazard Area Control rules. While reviewing proposed stream encroachment lines, the Department also verifies the depth and extent of flooding on a site as calculated by the applicant.

Since the establishment of stream encroachment lines along non-delineated watercourses requires the Department to review hydrologic and hydraulic calculations, existing N.J.A.C. 7:1C-1.5(a)4iv sets forth a major stream encroachment project review fee of \$4,000 per 1,000 linear feet of watercourse being delineated. It is appropriate that the project review fee increases with the length of the watercourse, since the Department's review time increases with the length of the watercourse being delineated. However, as for the fees being proposed for other linear projects requiring the review of calculations, the Department is proposing a fee of \$3,000 plus \$300.00 per each 100 linear feet of watercourse being delineated.

The proposed fee for stream encroachment lines based on calculations will be higher than the existing fees for smaller segments of stream and lower for longer segments. For example, the existing fee to set stream encroachment lines along 800 feet of stream is \$4,000 (one 1,000-foot segment at \$4,000 each), while the proposed fee along the same length of stream is \$5,400 (\$3,000 plus eight 100-foot segments at \$300.00 each). However, the existing fee to set stream encroachment lines along 3,500 feet of stream is \$16,000 (four 1,000-foot segment at \$4,000

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each), while the proposed fee is \$13,500 (\$3,000 plus thirty-five 100-foot segments at \$300.00 each).

The proposed fee also recognizes that stream encroachment lines are sometimes established without performing and reviewing calculations. For example, a stream encroachment line can be based on a Department delineation or a Federal flood insurance study that meets the requirements of the Flood Hazard Area Control rules, in which case no review of hydrologic or hydraulic calculations is necessary. Applicants can also propose to establish stream encroachment lines very far from a watercourse in such a way that a review of onsite topography reveals that the proposed lines clearly lie outside the flood hazard area. In such cases, the Department does not need to review calculations in order to conclude that the proposed stream encroachment lines meet the requirements of N.J.A.C. 7:13-2.4. Although not explicit in the existing rules, it has been the Department's longstanding practice to consider the establishment of encroachment lines without the review of calculations as a minor project element. Furthermore, it is the Department's experience that stream encroachment lines not based on calculations typically require one-half the review time required for other minor elements. The proposed rule therefore establishes a fee of \$500.00 for such stream encroachment lines and designates them as "minor" elements. In order to lessen the burden on private homeowners, no fee is proposed to review minor stream encroachment lines that are associated with the construction of one private residence (which is not being constructed as part of a larger residential subdivision) or an appurtenant building. This reflects the Department's longstanding practice of not requiring a fee to verify flood hazard elevations associated with such projects when no review of hydrologic or hydraulic calculations is necessary.

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As with other minor elements, the proposed fee for a utility crossing is increased from \$600.00 to \$1,000. Similarly, any other activity regulated under N.J.A.C. 7:13 but not expressly identified in Table 1 will be considered a minor element, consistent with the current fee schedule, and will be subject to a fee of \$1,000.

Existing N.J.A.C. 7:1C-1.5(a)4i(3) defines as a major project any "development where the applicant owns or controls more than one acre in a floodplain for commercial use" or any "subdivision of more than 10 acres for residential use." In cases where no other major element is proposed on a site, a fee has been assessed by the Department under this provision. However, it has been the Department's experience that the size of the site does not correlate with the level of review that is necessary. In cases where only a minor activity is proposed, such as a utility crossing, the level of review is identical whether the utility serves a 5-acre subdivision or a 500-acre subdivision. In other cases where a large amount of work is proposed on a site, the proposed activities are subject to fees according to the various activities that are proposed, such as net-fill calculations for excavation, fill or grading, or the construction of roads and bridges, which necessitates a review of hydrologic and/or hydraulic calculations. Generally, stormwater management calculations for larger sites will require a proportionately greater review effort. However, with the introduction of a separate fee for stormwater management review, as discussed below, there is no reason to assess an additional fee simply because a site is large. Therefore these fees are not continued under the proposed rules.

Proposed Table 2 establishes fees specifically for projects that require a review of stormwater management calculations. In February 2004, the Department promulgated new Stormwater Management rules at N.J.A.C. 7:8 (see 36 N.J.R. 670(a)). These rules set forth specific design, construction and maintenance standards that apply to any project that is a "major

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development,” which is defined at N.J.A.C. 7:8-1.2 as “any development that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more.”

As a result of the promulgation of the Stormwater Management rules, in addition to reviewing for compliance with the stream encroachment, freshwater wetlands and coastal program requirements, the Department must also review each stream encroachment permit application meeting the definition of a major development for compliance with the requirements at N.J.A.C. 7:8. The stormwater review typically involves a comprehensive review of stormwater facility and maintenance plans, construction details, in-depth narratives and alternative analyses, and detailed hydrologic and groundwater recharge calculations, necessary to demonstrate that the project meets the requirements of N.J.A.C. 7:8. Furthermore, certain major developments require review of impacts to the 300-foot Special Water Resource Protection Area that is established along Category One waters and certain tributaries pursuant to N.J.A.C. 7:8-5.5(h).

Before the Stormwater Management rules were promulgated, the Department performed basic stormwater reviews for many projects. However, the Stormwater Management rules contain standards that are significantly more comprehensive. The Department estimates that its engineering staff workload has doubled and its environmental staff workload has increased by approximately 25 percent as a result of the adoption of the Stormwater Management rules. Approximately 65 percent of stream encroachment applications now require some level of stormwater management review. Most applications require pre-application conferences, as well as an increased number of phone calls, letters and other communication in order to ensure projects will comply with the stormwater requirements. Project review times have therefore

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increased. Given the substantial increase in workload, the Department is proposing to establish fees for stream encroachment applications for major developments.

The proposed fees in Table 2 are proportional to the amount of development being proposed on a site and will be added to the application review fee applicable under Table 1. The current fee for the review of stormwater basins proposed within a flood hazard area or 100-year flood plain, pursuant to N.J.A.C. 7:1C-1.5(a)4, is \$4,000. However, the Department has determined that the stormwater review fee should be proportional to the amount of development proposed on a site to better reflect the review time required.

The Stormwater Management rules contain four basic standards that must be addressed, depending on the location of the site and type of development: nonstructural stormwater management standards (N.J.A.C. 7:8-5.3), groundwater recharge standards (N.J.A.C. 7:8-5.4(a)2), runoff quantity standards (N.J.A.C. 7:8-5.4(a)3) and water quality standards (N.J.A.C. 7:8-5.5). As noted above some projects are also subject to a Special Water Resource Protection Area (N.J.A.C. 7:8-5.5(h)). The Department is proposing an additional fee to cover the costs of the time required to review for compliance with these standards based upon the scope and complexity of the required review.

Since all major developments are required under N.J.A.C. 7:8 to maximize the use of nonstructural methods in order to comply with the stormwater management standards, a base fee of \$2,000 is proposed for all major developments. The other three sets of stormwater management standards depend upon the type, size, location and level of development. A project could potentially be subject to none, some, or all of these standards. The Department has therefore determined to establish additional stream encroachment review fees for each set of stormwater management standards.

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To review for compliance with either the groundwater recharge standards or runoff quantity standards, projects disturbing up to 3 acres will be subject to an additional \$500.00 fee. Similarly, projects disturbing more than 3 acres and up to 10 acres will be subject to an additional \$1,000 fee, projects disturbing more than 10 acres and up to 100 acres will be subject to an additional \$2,000 fee and projects disturbing more than 100 acres will be subject to an additional \$4,000 fee to review for compliance with either the groundwater recharge standards or runoff quantity standards.

Since water quality standards must be met only for stormwater runoff from impervious surfaces, the proposed fees for the review of water quality calculations are related to the total area of impervious surface. Projects involving up to 1 acre of impervious surface will be subject to an additional \$500.00 fee for the review of water quality calculations. Similarly, projects involving more than 1 acre and up to 3 acres of impervious surface will be subject to an additional \$1,000 fee, projects involving more than 3 acres and up to 10 acres of impervious surface will be subject to assessed an additional \$2,000 fee and projects involving more than 10 acres of impervious surface will be assessed an additional \$4,000 fee for the review of water quality calculations.

An additional \$2,000 review fee is proposed for projects that would disturb vegetation within a Special Water Resource Protection Area. Such projects typically require the Department to evaluate alternative and functional-value analyses related to the impact of development on the riparian zone.

While multiple permits may be required for the same project, for example, a freshwater wetlands permit in accordance with N.J.A.C. 7:7A and a stream encroachment permit, the Department will assess the stormwater review fees only once for each project, unless the project

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is redesigned or otherwise modified between permit applications. However, if an application requires review for only one of the four sets of stormwater management standards, and a subsequent application requires review of an additional or different standard, or proposes new encroachment into the Special Water Resource Protection Area, the base fee will be assessed once but each additional relevant stormwater component will be subject to a fee.

Depending on the type, size, location and level of development on a site, the proposed stormwater review fees will add between \$2,000 and \$16,000 to the total stream encroachment permit application review fees for a major development. Based on the average size of development for which stream encroachment applications were received in 2004, the Department estimates that the average stormwater review fee for a major development will be approximately \$4,500. This is somewhat higher than the \$4,000 fee for the review of one basin in a flood zone imposed under the existing rules.

N.J.A.C. 7:1C-1.5(a)5 sets forth the fee schedule for treatment works approvals, which are issued pursuant to N.J.A.C. 7:14A-22 and 23. The treatment works approval application fees are calculated based on project construction costs in accordance with N.J.A.C. 7:1C-1.5(a)5i through iii. N.J.A.C. 7:1C-1.5(a)5iv sets forth the minimum fee for treatment works approvals. Under the current rules, if the value of the fee calculated using the formula is less than \$450.00, then the minimum fee of \$450.00 applies.

The treatment works approval program has been subsidized with general revenue funds for many years. For fiscal year 2003 (FY2003), using the mechanism under the existing rules at N.J.A.C. 7:1C-1.5(a)5v through vii, the Department made an adjustment to the "P" coefficient in the fee calculation formula, which resulted in an increase in fees for treatment works approval applications by at least 52 percent (depending on project size and construction costs). This

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adjustment and fee increase did not affect smaller projects with lower construction costs for which the fee calculation resulted in a fee of \$450 or less. As noted above, for these projects the minimum fee applies.

Treatment works approval fees generate approximately \$1.6 million annually. The annual budget for the treatment works approval program is \$2.1 million. Consequently the revenue generated under the current fees does not cover the costs of the program. To close the gap, the Department published notice of the FY2006 treatment works approval fee report and schedule (see 37 N.J.R. 1541(a); May 2, 2005), under which an adjustment in the "P" coefficient in the fee formula will increase fees by at least 21 percent (depending on project size and construction costs), for those applicants whose projects exceed the minimum fee threshold. The Department is also proposing herein to increase the minimum fee to \$850.00, which represents an 89 percent increase in the minimum fee. The Department anticipates that the FY2006 increase in the fees derived under the formula, combined with the increased minimum fee proposed herein, will generate sufficient revenue to meet the current annual treatment works approval budget.

N.J.A.C. 7:1C-1.5(a)5viii sets forth the name and mailing address to which requests for copies of the annual treatment works approval fee schedule report are to be sent. Proposed amendments update this address.

N.J.A.C. 7:1C-1.5(b) sets forth the fees for extensions of time for issued treatment works approvals. The current fees for extensions of time are \$50.00 plus a base fee for Category 3 approvals and \$150.00 plus a base fee for Category 1 or 2 approvals. These fees have not been adjusted since 1995. Because processing extension requests for all categories of treatment works approvals generally requires the same level of review effort, the Department is proposing a fee of

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\$200.00 for the extension of any treatment works approval, as this fee will cover the costs to process such requests.

N.J.A.C. 7:1C-1.5(d) sets forth fees for modifications to both stream encroachment permits and treatment works approvals. It is not uncommon for an applicant to find that the design of a project must be revised to meet a local approval or other unforeseen situation after the application has been reviewed and approved by the Department. As such, N.J.A.C. 7:13-4.9 provides for stream encroachment permits to be modified and N.J.A.C. 7:14A-22.11 provides for treatment works approvals to be modified. The fee to modify either type of approval is set forth at existing N.J.A.C. 7:1C-1.5(d)1, and is either one-quarter of the total original permit fee or a minimum of \$100.00. Approved projects generally involve multiple elements and typically only some elements are sought to be modified. The existing fee of one-quarter of the total original fee for the entire project can be disproportionately high in relation to the amount of Department review required if only minor changes are to be made in a very large project. The Department is proposing to amend N.J.A.C. 7:1C-1.5(d)1 to establish separate fees for stream encroachment permit modifications and treatment works approval modifications.

Proposed N.J.A.C. 7:1C-1.5(d)1i establishes the fee for stream encroachment permit modifications that require a review of calculations to determine whether the proposed modification meets the design and construction standards of the Flood Hazard Area Control rules. Proposed N.J.A.C. 7:1C-1.5(d)1ii establishes the fee for stream encroachment permit modifications that do not require a review of calculations. This distinction is necessary because some proposed modifications involve a number of changes that require a large amount of review effort, while other changes are of a very minor nature and require minimal review time.

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For those projects that require a review of calculations, the stream encroachment permit modification fee is proposed to be 50 percent of the original permit application fee for each modified project element. An example of such a modification would be a change in the volume of fill on a site, thus requiring the net-fill calculations to be reevaluated. The Department has determined that 50 percent of the original permit review fee for the modified element covers the costs of the Department's review.

Since major elements require a review of calculations whereas minor elements do not, a proposed modification involving a review of calculations would only be made to a major element. The only exception involves the modification of net-fill calculations associated with solely one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed). Since the Department does not charge a fee to review net-fill calculations in such a case, the proposed fee to modify the calculations would be 50 percent of the original application fee paid for the residence or appurtenant structure.

For stream encroachment permit modification where no review of calculations is required, the fee is proposed to be \$200.00 for each modified project element. An example of such a modification would be a request to add notes to an approved drawing or a minor change in the location of a proposed structure that does not require reevaluation of calculations. Such a modification could be made to either a major element or a minor element provided no review of calculations is necessary. The Department has determined that \$200.00 will cover the Department costs of review for such modifications.

Proposed N.J.A.C. 7:1C-1.5(d)2 establishes the fee to modify a treatment works approval. Under the current rule, this fee is one-quarter of the total original permit fee or a

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minimum of \$100.00. The proposed amendment will establish the treatment works approval modification fee using the treatment works approval fee formula, that is, the construction cost of the project change(s) will be substituted for the construction cost in the fee formula at N.J.A.C. 7:1C-1.5(a)5i through iii. The Department also proposes to raise the minimum fee for modifications to \$500.00. If the value of the modification fee calculated using the formula is less than \$500.00, the minimum fee applies. The increase in the minimum fee is necessary to offset the cost of reviewing these applications.

Social Impact

The rules proposed for readoption with amendments will continue the positive social impact of the existing rules by providing clear application fees, procedures and deadlines for the Department's flood hazard and treatment works permit programs. Readoption of these rules will continue to provide predictability for permit applicants and the Department as regards permit application costs and timeframes.

The proposed amendments to increase stream encroachment permit fees for the flood hazard program will have a positive social impact for the majority of New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. In addition, society as a whole benefits from regulating construction within flood hazard areas and protecting surface waters and stream corridors because of the value they provide for water quality protection, flood protection, and as habitat for fish and wildlife, including commercial and recreational species. The amendments to increase fees may also have a positive social impact if they discourage some applicants from pursuing construction in flood hazard areas and along stream corridors.

The proposed amendments to increase stream encroachment permit fees will result in a negative social impact for the building industry because they will increase the permitting costs necessary for construction in environmentally sensitive areas. The proposed fee increases may also result in increased costs for housing and other buildings if the construction industry passes its fees on to the individuals purchasing new homes and commercial structures. However, such negative impact is minor in comparison to the positive impacts resulting from the protection of the flood hazard area.

The proposed amendments to the treatment works approval fees will have a positive social impact for the majority of New Jersey's taxpayers because the adjusted fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. In addition, society as a whole benefits from the Department's regulation of the construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems, since such regulation minimizes potentially adverse environmental impacts associated with malfunctioning systems.

Economic Impact

The rules proposed for readoption with amendments will continue the positive economic impact of the existing rules in that they provide orderly and efficient assessment of fees, procedures and deadlines for construction permit applications. The permit application fees in the 90-day rules are generally based on the actual cost of application review. Permit application fees go into the State Treasury, and the Department receives a budget appropriation that is used in part for application review. Because the 90-day rules include a deadline within which a permit

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must be issued or denied, they promote timely and efficient decision making, avoiding costly construction delays for the regulated community.

The proposed amendments to increase stream encroachment permit fees for the flood hazard program will have a positive economic impact on the majority of New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. To the extent that the proposed fee increases might discourage development in flood hazard areas and along stream corridors, the amendments could have a positive economic impact in avoiding the costs that can be incurred for the maintenance or repair of buildings in areas that may be vulnerable to flood damage, settling, mold, mildew and other moisture problems.

The proposed amendments to increase stream encroachment permit fees may result in a negative economic impact for the building industry because they will increase the permitting costs required for construction in flood hazard areas and along stream corridors. However, the Department believes that, despite the increases, the permit fees still constitute a relatively small expense compared to the overall costs of developing in environmentally sensitive areas. In general the number of permit actions has been increasing each year. Since each approval represents a development project of some type, despite the permit fees, there is a substantial economic benefit accrued by the applicant or developer to pursue their proposed developments despite environmental constraints.

The proposed amendments to increase stream encroachment permit fees may also result in increased costs for housing and other buildings if the construction industry passes its fees on to the individuals purchasing new homes and commercial structures. Increased fees for projects by public entities, such as county bridge replacements and municipal roadway improvements, are

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likely to be passed on to taxpayers through local property taxes. However, permitting fees represent a very small percentage of the overall budget for such projects, and the Department believes the fees are justified by the flood-risk reduction and the protection for surface water quality and stream corridors resulting from the State's regulation and review of proposed projects under the flood hazard program.

Persons affected by the flood hazard program include property owners situated in flood hazard areas and along stream corridors. Property owners outside these areas are affected only incidentally by this program, inasmuch as the costs for local flood relief efforts are likely borne by taxpayers, and restrictions on land uses within flood hazard areas may increase property values outside them. The flood hazard program also imposes additional design and construction standards on both private and public roadways, which increases construction costs but also increases the life span of such roadways and reduces flood damage potential. Therefore, while the program does place some additional burden on local governments and developers who propose to build roads and buildings in flood hazard areas, the added cost of compliance is necessary and appropriate to offset potential loss of life and property.

The proposed treatment works approval fee amendments will have an economic impact on those applicants whose initial treatment works approval applications fall below the minimum fee threshold, and on those seeking modifications or extensions of treatment works approvals. However, these fees are relatively small costs in comparison to the overall costs of a given treatment works project. Therefore, the economic impact resulting from these amendments is expected to be minimal.

Federal Standards Analysis

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Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 C. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards analysis.

Although the Federal Emergency Management Agency (FEMA) delineates some flood hazard areas in the State for the purposes of the Federal flood insurance program, there is no Federal agency or program that directly regulates activities in flood hazard areas based on their potential flooding impacts. The Code of Federal Regulations Title 44 Part 60 enables FEMA to require municipalities that participate in the National Flood Insurance Program (NFIP) to adopt certain flood hazard reduction standards for construction and development in 100-year flood plains. However, a community's participation in the NFIP is voluntary, and FEMA does not otherwise regulate land uses in flood hazard areas. Furthermore, the Federal flood reduction standards at C.F.R. Title 44 Part 60 are administered by local governments. Therefore, the Department has determined that the proposed stream encroachment fee amendments do not exceed any Federal standards or requirements, and that Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

The treatment works program has no Federal counterpart, and is not promulgated under or to comply with any Federal law. Accordingly, no Federal Standards Analysis is required.

Environmental Impact

The rules proposed for readoption with amendments will continue the positive environmental impacts of the existing rules, by which revenues to support the operation of the Department's flood hazard and treatment works programs are generated. The flood hazard area program helps ensure that development proposed along stream corridors and within flood hazard

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areas is constructed in such a way as to avoid or minimize flooding, erosion, sedimentation and water quality impacts. The treatment works approval program regulates the construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems in a manner that minimizes potentially adverse environmental impacts associated with malfunctioning systems.

Jobs Impact

The rules proposed for readoption with amendments are not expected to have any impact on the number of jobs in the State. This proposal does not change the type or location of development that is subject to regulation by the Department, nor does this proposal alter the administrative requirements associated with the submission of a permit or treatment works approval application. There are no greater permitting restrictions or requirements being proposed that would result in the loss or gain of jobs relating to the construction or environmental consulting industries. Therefore, the proposed readoption with amendments should have no impact on jobs.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Department evaluated this rulemaking to determine the nature and extent of the impacts of the proposed amendments on the agriculture industry.

The rules proposed for readoption with amendments will have no impact on agricultural activities. Agricultural activities would be subject to stream encroachment permit requirements only if the activity met the definition of development. Any impacts on agriculture would be

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caused by the substantive requirements of the Flood Hazard Area Control rules, not by these timeframe and fee rules. The proposed readoption will not result in any additional activities being regulated by the treatment works approval program.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:148-16 et seq., the Department has determined that the rules proposed for readoption do apply to "small businesses" as defined in the Act.

To comply with the rules, small businesses may have to submit permit applications, which may require engineering support work, assistance in evaluating the environmental impact of projects, and an application fee. The extent of information required in an application and the amount of the application fee depend upon the scope and location of the proposed project. To the extent that small businesses are likely to propose smaller-scale projects, application fees will be lower for small businesses than for larger businesses.

The proposed stream encroachment and treatment works approval fee amendments will not impose additional reporting or recordkeeping requirements on small businesses. The proposed fees are based on the type of permits being sought, which in turn are based on potential impacts to flooding and the environment or on the nature and scope of the wastewater system being reviewed. Therefore, the proposed fee increases will generally have the same impact on small businesses as on other persons (see Economic Impact above).

The Department has balanced the costs imposed on small businesses under the rules proposed for readoption with amendments against the environmental and public health and

welfare benefits achieved by their implementation and determined that it would be inappropriate to exempt or provide lesser requirements for small businesses.

Smart Growth Impact

Inasmuch as the Ninety-Day Construction Permits rules establish the application fees, procedures, and deadlines necessary to administer the flood hazard and treatment works approval programs, which in turn discourage incompatible development of environmentally sensitive features that are vital to the health and well-being of the present and future citizens of the State, the rules proposed for readoption with amendments are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities, as described in Executive Order No. 4 (2002).

The flood hazard program ensures that development within flood hazard areas and along stream corridors, which is likely to have a greater environmental impact and related economic costs than development outside these areas, is closely scrutinized and, as appropriate, discouraged. Furthermore, the treatment works program ensures the proper construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems, which encourages redevelopment of the existing urban infrastructure. Therefore, the rules proposed for readoption with amendments comport with the goals of smart growth and implementation of the State Plan as described in Executive Order No. 4 (2002).

Full text of the proposed amendments follows (additions indicated in boldface thus;) deletions indicated in brackets [thus]:

CHAPTER 1C NINETY DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. NINETY DAY CONSTRUCTION PERMITS RULES

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. – 3. (Reserved.)

4. Stream encroachment permits:

[i. As used in this paragraph, the following terms shall have the following meanings:

(1) "Drainage area" means the total area contributing run-off to a specified point, expressed in acres or square miles;

(2) "Minor stream encroachment project" means an encroachment project that does not require hydrologic and/or hydraulic review; does not require review of any stormwater detention basin; does not increase potential for erosion or sedimentation in stream and does not require substantial channel modification or relocation; and does not need to be reviewed for the zero percent or 20 percent "net-fill" limitations other than that associated with a single family dwelling. These shall include, but are not limited to, the following activities in a floodplain: major desnagging and stream clearing, minor dredging projects, dug ponds without structure, stormwater discharge, including direct discharge into a floodplain, minor water intake facilities, minor regrading, utilities in the flood plain, each channel crossing of utility, bank stabilization at

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grade, minor bank reestablishment and/or protection projects, less than 100 linear feet of channel modification, less than 100 linear feet of a retaining wall four foot high or less, footbridges, bridge deck replacements, recreation and habitat management structures of the Division of Fish, Game and Wildlife, farming practices (including ditches) approved by the Soil Conservation Service, and projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq. Governmental agencies may combine their stream cleaning projects for a calendar year and submit them as one project which will be considered a minor project.

(3) "Major stream encroachment project" means a project that requires hydrologic and/or hydraulic review or the review of stormwater detention basin(s) or involves fill or structures necessitating review for compliance with the zero percent or 20 percent "net-fill" limitation specified in N.J.A.C. 7:13. In addition, the following shall be classified as a major project: development where the applicant owns or controls more than one acre in a floodplain for commercial use or a subdivision of more than 10 acres for residential use. Major project elements shall include, but not be limited to, the following activities within a floodplain: bridges, culverts, small dams, greater than 100 linear feet of channel modifications, and greater than 100 linear feet of a retaining wall more than four feet high.

ii. For each project element of minor stream encroachment projects, the fee shall be \$600.00 for each project element that is to be reviewed.

iii. For each project element of major projects, the fee shall be \$4,000 for each project element that is to be reviewed.

iv. For major stream encroachment projects requiring the establishment of an encroachment line or the modification to a stream, the fee shall be \$4,000 for each 1,000-foot reach of the channel or portion thereof.

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v. For major stream encroachment projects that consist of an individual driveway culvert and fill in the floodplain for one single family residence, the fee shall be \$2,000 for the culvert and \$800.00 for the fill.

vi. Except as provided at (a)4vi above, an additional fee shall not be charged for projects involving fill associated with the development of a single family residential lot or for fill associated with bridges and culverts.]

i. For the purposes of this paragraph a “major” element is any activity for which the Department must review the following:

(1) Stormwater management calculations in order to determine compliance with the requirements of the Stormwater Management rules at N.J.A.C. 7:8; and/or

(2) Hydrologic, hydraulic, net-fill and/or stability calculations in order to determine compliance with the requirements of the Flood Hazard Area Control rules at N.J.A.C. 7:13, other than net-fill calculations associated solely with one single-family residence and/or any appurtenant structure(s).

ii. For the purposes of this paragraph a “minor” element is any activity that is not classified as a “major” element at (a)4i above.

iii. The application fee for a stream encroachment permit shall be determined by adding the individual fees for each project element proposed on a site as identified in Table 1 below and, if applicable, the additional fee for major development in Table 2 below. Table 1 identifies each activity as either a major or minor element, in accordance with (a)4i and ii above. For the purposes of a stream encroachment permit application submitted under N.J.A.C. 7:13, any application that includes at least one major element constitutes a major

project. In the case where a fee is based on the length of a channel but no channel is discernible (such as along intermittent streams or through impounded areas such as lakes and ponds), the fee applicable under Table 1 below shall be based on the length of the centerline of the feature.

Table 1
Stream Encroachment Application Fees for Activities Regulated under N.J.A.C. 7:13

<u>Project Element</u>	<u>Qualifier</u>	<u>Type</u>	<u>Fee</u>
<u>Bank stabilization, reestablishment, or protection</u>	<u>Review of hydrologic and/or hydraulic calculations necessary</u>	<u>Major</u>	<u>\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof)</u>
	<u>Review of hydrologic and/or hydraulic calculations not necessary</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Bridge, culvert, footbridge, low dam or other water control structure</u>	<u>Review of hydrologic and/or hydraulic calculations necessary (except as noted below)</u>	<u>Major</u>	<u>\$4,000</u>
	<u>Review of hydrologic and/or hydraulic calculations necessary for a bridge or culvert that provides access to one private residence (which is not being constructed as part of a larger residential subdivision)</u>	<u>Major</u>	<u>\$2,000</u>
	<u>Review of hydrologic and/or hydraulic calculations not necessary</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Channel modification</u>	<u>Review of hydrologic and/or hydraulic calculations necessary</u>	<u>Major</u>	<u>\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof)</u>
	<u>Review of hydrologic and/or hydraulic calculations not necessary</u>	<u>Minor</u>	<u>\$1,000</u>

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<u>Excavation, fill and/or grading</u>	<u>Review of net-fill calculations necessary (except as noted below)</u>	<u>Major</u>	<u>\$4,000</u>
	<u>Review of net-fill calculations not necessary and project consists solely of excavation, fill and/or grading</u>	<u>Minor</u>	<u>\$1,000</u>
	<u>Review of net-fill calculations necessary and project consists solely of one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)</u>	<u>n/a</u>	<u>No fee</u>
	<u>Review of net-fill calculations necessary for a bridge or culvert that is a major element</u>	<u>n/a</u>	<u>No fee</u>
<u>Hardship waiver</u>	<u>Request associated with one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)</u>	<u>n/a</u>	<u>No fee</u>
	<u>Any other request</u>	<u>Major</u>	<u>\$4,000</u>
<u>Private residence</u>	<u>One private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)</u>	<u>Minor</u>	<u>\$1,000</u>
	<u>Addition and/or new appurtenant structure to an existing private residence, such as a garage, barn or shed</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Retaining wall</u>	<u>Extends 4 feet or more above the ground</u>	<u>Major</u>	<u>\$4,000</u>
	<u>Extends less than 4 feet above the ground</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Sediment removal from a channel</u>	<u>Each sediment removal project</u>	<u>Minor</u>	<u>\$1,000 plus \$100.00 per each 100-foot segment of channel (or portion thereof) not to exceed \$4,000</u>

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<u>Stormwater discharge structure</u>	<u>Each stormwater discharge structure (including any conduit outlet protection and/or conveyance channel)</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Stream encroachment line and/or establishing a flood hazard elevation</u>	<u>Review of hydrologic and/or hydraulic calculations necessary</u>	<u>Major</u>	<u>\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof)</u>
	<u>Review of hydrologic and/or hydraulic calculations not necessary (except as noted below)</u>	<u>Minor</u>	<u>\$500.00</u>
	<u>Review of hydrologic and/or hydraulic calculations not necessary and project consists solely of one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)</u>	<u>n/a</u>	<u>No fee</u>
<u>Utility line</u>	<u>Each crossing</u>	<u>Minor</u>	<u>\$1,000</u>
<u>Any other activity</u>	<u>Each project element</u>	<u>Minor</u>	<u>\$1,000</u>

Table 2
Additional Fees for Major Developments pursuant to N.J.A.C. 7:8-1.2

<u>Qualifier</u>	<u>Area of Impact</u>	<u>Fee</u>
<u>Base fee for any major development</u>	<u>Any size project</u>	<u>\$2,000</u>
<u>Additional fee for the review of groundwater recharge calculations (pursuant to N.J.A.C. 7:8-5.4(a)2) per area of land disturbed by the project:</u>	<u>Up to 3 acres</u>	<u>\$500</u>
	<u>More than 3 acres and up to 10 acres</u>	<u>\$1,000</u>
	<u>More than 10 acres and up to 100 acres</u>	<u>\$2,000</u>
	<u>More than 100 acres</u>	<u>\$4,000</u>
<u>Additional fee for the review of runoff quantity calculations (pursuant to N.J.A.C. 7:8-5.4(a)3) per area of land disturbed by the project:</u>	<u>Up to 3 acres</u>	<u>\$500</u>
	<u>More than 3 acres and up to 10 acres</u>	<u>\$1,000</u>
	<u>More than 10 acres and up to 100 acres</u>	<u>\$2,000</u>
	<u>More than 100 acres</u>	<u>\$4,000</u>
<u>Additional fee for the review of water quality calculations (pursuant to N.J.A.C. 7:8-5.5) per area of impervious surface under review:</u>	<u>Up to 1 acre</u>	<u>\$500</u>
	<u>More than 1 acre and up to 3 acres</u>	<u>\$1,000</u>
	<u>More than 3 acres and up to 10 acres</u>	<u>\$2,000</u>
	<u>More than 10 acres</u>	<u>\$4,000</u>
<u>Additional fee if any vegetation is removed within a Special Water Resource Protection Area (pursuant to N.J.A.C. 7:8-5.5(h))</u>	<u>Any size project</u>	<u>\$2,000</u>

5. Treatment works approval fees shall be calculated as follows:

i. – iii. (No change.)

iv. An applicant for a treatment works approval shall pay a minimum fee of [\$450.00] **\$850.00**.

v. – vii. (No change).

viii. The annual fee schedule report may be obtained, at any time after public notice is published in accordance with (a)5vi or vii above, by submitting a request and self addressed 10 inch by 13 inch (minimum size) envelope to:

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New Jersey Department of Environmental Protection

Environmental Regulation

Division of Water Quality

Bureau of [Construction and Connection] **Financing and Construction** Permits

Annual Report Request

PO Box [029] **425**, 3rd Floor

Trenton, New Jersey 08625[-0029]

(b) Extensions of time for issued treatment works approvals will be granted in accordance with N.J.A.C. 7:14A-22.12. **The fee for a request for an extension of time is \$200.00.**

[1. Besides the base fee, an additional \$50.00 shall be charged for each extension of time requested for a Category 3 treatment works approval, and \$150.00 for each extension of time requested for a Category 1 or 2 treatment works approval.]

(c) (No change.)

(d) For the purposes of this section, a modification to an issued permit will be processed for modified projects which will not result in a significant change in the scale, use, or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and the new information submitted by the applicant. A change that will cause less environmental impact than the original project will not constitute a "significant change." Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, change in foot print location, and a change in the hydraulics of a stream.

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[1. The fee for a request for an approval of a modification of the approved project shall be one-quarter of the total original permit fee or a minimum of \$100.00.]

1. The fee for a request to modify a stream encroachment permit is:

i. Fifty percent of the original permit application fee for each modified project element for which the Department must review calculations in order to determine that the proposed

modification meets the requirements of N.J.A.C. 7:8 and/or N.J.A.C. 7:13; and/or

ii. \$200.00 for each modified project element for which the Department does not need to review calculations in order to determine that the proposed modification meets the requirements of N.J.A.C. 7:8 and N.J.A.C. 7:13.

2. The fee for a request to modify a treatment works approval shall be calculated based on the construction cost of the project change(s) in accordance with (a)5i through iii above. If the value of the fee so calculated is less than \$500.00, the applicant shall pay a treatment works approval modification minimum fee of \$500.00.

(e) through (k) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of this proposal. I hereby authorize this proposal.

Date

Bradley M. Campbell
Commissioner